LIBRARY
SUPREME COURT, U. S.
JUL 28 1961
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

NO. 199

JONES & LAUGHLIN STEEL CORPORATION,
Petitioner,

v.

THE J. R. CLARK COMPANY and JOHN R. CLARK,
Respondents.

REPLY BRIEF FOR PETITIONER

H. PARKER SHARP
G. R. HARRIS
3 Gateway Center
Pittsburgh 30, Pa.
Attorneys for Petitioner

July 28, 1961

SMITH BROS. LTD. INC. LAW PRINTERS 414-416 BLVD. OF ALLIES PITTSBURGH 19, PA.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

NO. 199

JONES & LAUGHLIN STEEL CORPORATION,
Petitioner,

v.

THE J. R. CLARK COMPANY and JOHN R. CLARK,
Respondents.

REPLY BRIEF FOR PETITIONER

I. Respondents' Brief in opposition in no way impairs the fact that the decision below is a denial of due process.

a. Respondents argue that petitioner was afforded due process because petitioner could have taken advantage of a judgment in favor of G. P. & F. in the litigation between respondents and that party. This is cart-before-the-horse reasoning and ignores *Rubber Tire & Wheel Co. v. Goodyear.*

b. Petitioner did not "step into the shoes of its vendor". As the opinion of the court below states, respondents and G. P. & F. are engaged in an accounting to determine the damages recoverable by respondents from G. P. & F. Petitioner is not a party to that proceeding and assumed none of G. P. & F.'s liabilities. G. P. & F. remained a going concern after it sold petitioner certain of its assets, and is now a going concern, standing in its own shoes.

II. The public interest is better served by restricting rather than expanding the scope of res adjudicata.

Respondents stress the "never-ending parade of law suits" which they say would be the result of a reversal of the finding below of privity between petitioner and G. P. & F., but seek to explain away the never-ending restraint on competition which is a necessary consequence of that finding. While it is desirable to minimize litigation, it is also desirable that no monopoly not fully justified by law be asserted against the public. Petitioner's defenses in this action are not those asserted by G. P. & F. against respondents in their litigation. Petitioner is not seeking here to retrace ground which has been once travelled but to bring before a court new evidence of the invalidity of respondents' patent. If the decision below is allowed to stand it will not only enlarge the scope of respondents' patent to restrain competition in the sale of unpatent articles but will also substantially reduce the likelihood that respondents' patent will be fully tested by the standards of 35 U.S.C. 101 and 103.

III. The question of double patenting is not moot.

The question of double patenting is not moot because the courts below held that respondents' patents are for different inventions. That finding stands on no better footing than the findings of the lower courts in *Great Atlantic & Pacific Tea Co. v. Super Market,* that the patent there at issue was for inventive subject matter. This Court there declared that the courts below had applied the wrong standard of invention and that their findings could not stand as a matter of law. In the case

at bar the courts below applied the wrong standard of double patenting.

Respectfully submitted,

H. PARKER SHARP
G. R. HARRIS
Attorneys for Petitioner